

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION**

RAYSHAWN DEMOSTHENE,

Petitioner,

v.

Case No: 5:21-CV-629-WFJ-PRL

WARDEN, FCC COLEMAN-USP I,

Respondent.

ORDER DISMISSING CASE

Petitioner, proceeding *pro se*, initiated this case by filing a Petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. (Doc. 1). Petitioner asserts that he is “factually innocent in light of a recent supreme court decision and his sentence is being carried out under an unlawful plea agreement.” *See* Doc. 1 at 6-8, 13-15. Petitioner’s motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255 was denied. *See* Case 1:18-cv-05346-PKC (S.D.N.Y). Petitioner then moved for leave to file a successive § 2255, raising some version of the claims raised in this instant Petition. The motion was denied. *See* Case No. 21-647 (2d Cir. May 4, 2021).

Rule 12(h)(3) of the Federal Rules of Civil Procedure provides that “[i]f the court determines at any time that it lacks subject matter jurisdiction, the court must dismiss the action.” See also Rule 12, Rules Governing Section 2255 proceedings. Recently, sitting *en banc* the Eleventh Circuit overruled prior precedent and held that 28 U.S.C. § 2241 is not available to challenge the validity of a sentence except on very

narrow grounds not present in this case. *McCarthan v. Director of Goodwill Industries-Suncoast, Inc.*, 851 F.3d 1076, 1079 (11th Cir. 2017) (en banc) (quoting 28 U.S.C. § 2255(e)); *Bernard v. FCC Coleman Warden*, 686 F. App'x 730 (11th Cir. 2017) (citing *McCarthan*, 851 F.3d at 1092-93).

Thus, pursuant to Rule 4(b) of the Rules Governing Section 2255 Proceedings for the United States District Courts (directing *sua sponte* dismissal if the petition and records show that the moving party is not entitled to relief), this case is **DISMISSED**. *See also* 28 U.S.C. § 2255(b). The **Clerk** is directed to enter judgment dismissing this case without prejudice, terminate any pending motions, and close the file.

IT IS SO ORDERED.

DONE AND ORDERED at Tampa, Florida, on March 24, 2022.



WILLIAM F. JUNG
UNITED STATES DISTRICT JUDGE

Copies to: Pro Se Petitioner